



**DEPARTMENT OF THE ARMY**  
**OFFICE OF THE DEPUTY CHIEF OF STAFF, G-1**  
**ASSISTANT G-1 FOR CIVILIAN PERSONNEL**  
**EAST REGION, SOUTH CENTRAL AREA, FORT POLK CPAC**  
**2271 LOUISIANA AVENUE**  
**FORT POLK, LOUISIANA 71459**

CIVILIAN PERSONNEL  
BULLETIN NO. 05-11

30 October 2010

## **POLITICAL ACTIVITIES**

As the mid-term elections approach, it is important that we review and understand the political activities in which we can and cannot engage. To facilitate that understanding, listed below are answers to some of the most frequently asked questions of the Office of Special Counsel concerning political activity. The advice provided below concerns the interpretation of the federal Hatch Act only and does not take into account any other federal, state, or local laws that may be applicable. Employees who have additional questions or want additional information about the Act may contact OSC to obtain an [advisory opinion](#).

**1. Are all federal employees covered by the Hatch Act?**

*Answer: No. For purposes of the Hatch Act, the term federal "employee" means any individual, other than the President and the Vice President, employed or holding office in one of the following: 1) an Executive agency other than the General Accounting Office; 2) a position within the competitive service which is not an executive agency; or 3) the government of the District of Columbia, other than the Mayor, City Council members, or the Recorder of Deeds. Additionally, under the Hatch Act the term federal employee does not include a member of the uniformed services.*

**2. I work for the Post Office. Am I covered?**

*Answer: Yes. See 39 U.S.C. § 410(b)(1).*

**3. I am a member of the uniformed services. Am I covered by the Hatch Act?**

*Answer: No. Members of the uniformed services are not covered by the Hatch Act. However, if you are a reservist and a federal civilian employee, you are covered by the Hatch Act.*

**4. Are federal executive agency employees who are detailed to the legislative branch still covered by the Hatch Act?**

*Answer: Yes. The Hatch Act defines employee as "any individual, other than the President and the Vice President, employed or holding office in: an Executive agency other than the General Accounting Office . . ." Thus, an employee detailed to the legislative branch remains an employee as defined by the Hatch Act. As such, an employee detailed to the legislative branch remains covered by the Hatch Act and subject to the Act's restrictions on political activity.*

### **PARTISAN ELECTIONS AND CANDIDACY**

**1. What is a partisan election?**

*Answer: A partisan political election is one in which any candidate is to be nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but does not include any office or position within a political party or affiliated organization. Examples of political parties that received votes in the last Presidential election are the Democratic, Republican, Libertarian and Green Parties. Thus, a partisan election is one in which any candidate is to be nominated or elected as representing a political party. An election is partisan even if only one candidate represents a political party and the others do not.*

*The prohibition against being a candidate in a partisan election does not include running for an office or position within a political party or affiliated organization; however, note that employees who are further*

restricted under the Hatch Act may not hold a position or office in a political party or affiliated group because the Act prohibits them from taking an active part in partisan political management.

**2. Can I be a candidate in a partisan political election?**

*Answer:* Generally, federal employees may not be candidates in partisan elections. However, the Office of Personnel Management (OPM) has promulgated a federal regulation designating specific localities where federal employees residing there may be independent candidates in local partisan elections. The localities listed in the regulation are those where the majority of voters are federal employees or where special circumstances exist such that it is in the domestic interest to permit federal employees to run for local partisan political office. OPM's list of designated localities can be found at 5 C.F.R. § 733.107.

**3. May I run as an independent candidate in a partisan election?**

*Answer:* Generally, federal employees may not be candidates in partisan elections, even if they run as political independents. Only those federal employees, including further restricted employees, residing in localities specifically designated by the Office of Personnel Management (OPM) may run as independents in local elections that are otherwise partisan. OPM's list of designated localities can be found at 5 C.F.R. § 733.107.

**4. I live in a designated locality and I want to run as an independent candidate for State Senate. May I do so?**

*Answer:* No. The exception allowing federal employees who reside in designated localities to be independent candidates in partisan elections applies only to elections for local offices in the locality where the employee resides. Thus, an employee residing in a designated locality may not be a candidate for state office, if the election is partisan.

**5. May I keep my elected position if I become a federal employee after taking office?**

*Answer:* Yes. Although the Hatch Act prohibits federal employees from being candidates in partisan elections, it does not prohibit them from holding partisan elective office. Thus, if an individual holds elected office when he becomes employed by the federal government, he may serve out the remainder of his term. Likewise, a federal employee may be appointed to fill a vacancy in a partisan elective office. In both of these situations, however, the federal employee may not seek to retain the position by way of a partisan election.

**6. Can I be appointed to a partisan political office?**

*Answer:* Yes. Federal employees may be appointed to a partisan political office. Although the Hatch Act prohibits federal employees from being candidates in partisan elections, it does not prohibit them from holding partisan elective office. Thus, the Hatch Act does not prohibit a federal employee from being appointed to a partisan elective office. The federal employee, however, may not seek to retain the position by way of a partisan election without first resigning from federal employment.

**NONPARTISAN ELECTIONS AND CANDIDACY**

**1. What is a nonpartisan election?**

*Answer:* A nonpartisan election is one in which none of the candidates are to be nominated or elected as representing a political party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected. 5 C.F.R. § 734.101. Examples of political parties that received votes in the last Presidential election are the Democratic, Republican, Libertarian and Green Parties. The Hatch Act does not prohibit covered employees from being candidates in nonpartisan elections.

**2. Can a nonpartisan election become partisan?**

*Answer: State and local laws create only a rebuttable presumption that an election is nonpartisan. See Special Counsel v. Yoho, 15 M.S.P.R. 409, 413 (1983), overruled on other grounds, Special Counsel v. Purnell, 37 M.S.P.R. 184 (1988). Evidence showing that partisan politics actually enter the campaigns of the candidates may rebut this presumption. See McEntee v. Merit Sys. Prot. Bd., 404 F.3d 1320 (Fed. Cir. 2005); In re Broering, 1 P.A.R. 778, 779 (1955). For example, if a candidate solicits or advertises the endorsement of a partisan political party or uses a political party's resources to further his or her campaign, these actions may rebut the presumption that an election is nonpartisan, and thus, indicate that the election is a partisan one. While each case is fact specific, the Board has consistently held that it is less about the title used, and more about the actions of the candidate. The general analysis is whether the candidate acted in concert with a partisan political party. See Special Counsel v. Campbell, 58 M.S.P.R. 170 (1993), aff'd, 27 F.3d 1560 (Fed. Cir. 1994); McEntee v. Merit Sys. Prot. Bd., 404 F.3d 1320 (Fed. Cir. 2005).*

**3. If I run as a candidate for public office in a nonpartisan election, does the Hatch Act allow me to ask for and accept political contributions?**

*Answer: An employee who is a candidate for public office in a nonpartisan election is not barred by the Hatch Act from soliciting, accepting, or receiving political contributions for his or her own campaign.*

**4. I am a candidate in a nonpartisan election. Can I use my official title in my campaign materials?**

*Answer: Because the election is nonpartisan, the Hatch Act would not prohibit you from using your official title in your campaign materials. However, you should check with your agency ethics official about other rules or regulations that may govern such activity.*

**PARTISAN POLITICAL PARTIES AND GROUPS**

**1. Can I hold party office?**

*Answer (Less Restricted employees): Yes. While the Hatch Act prohibits a federal employee from being a candidate for public office in a partisan election, the Act does not prohibit an employee from being a candidate for party office. Thus, you may run for and hold office within a political party.*

*Answer (Further Restricted employees): No. Because a Further Restricted employee may not take an active part in partisan political management, you may not run for or hold party office.*

**2. Can I attend a state or national party convention? If so, in what capacity?**

*Answer (Less Restricted employees): Yes. A federal employee may serve as a delegate, alternate, or proxy to a state or national party convention.*

*Answer (Further Restricted employees): A Further Restricted employee may attend a party convention as a spectator, but the employee may not serve as a delegate or proxy or address the convention, for example, to promote or oppose a candidate.*

**3. What is a partisan political group or organization? For example, is Organizing for America a partisan political group or organization?**

*Answer: "Partisan political groups or organizations" are committees, clubs and other organizations that affiliate with a political party or candidate for political office in a partisan election. The term also includes committees, clubs and other organizations that are organized for a partisan political purpose. The Organizing for America website specifically states that Organizing for America is "a project of the*

Democratic National Committee.” Accordingly, *Organizing for America* is affiliated with a political party and is therefore a partisan political group or organization.

## **CAMPAIGNING – GENERALLY**

### **1. Can I put a campaign sign in my front yard?**

**Answer (Less Restricted employees):** Yes. A Less Restricted employee may place in his or her front yard a sign or banner supporting a partisan political candidate

**Answer (Further Restricted employee):** Yes. A Further Restricted employee may place in his or her front yard a sign or banner supporting a partisan political candidate.

### **2. Can I volunteer for someone’s campaign?**

**Answer (Less Restricted employees):** Yes, Less Restricted employees may volunteer for a partisan candidate’s campaign. Less Restricted employees are permitted to participate in political activities to the extent not expressly prohibited by the Hatch Act. Examples of permitted activities that constitute political campaigning include: initiating or circulating nominating petitions; canvassing votes in support of or in opposition to a partisan political candidate; endorsing a partisan political candidate; attending and being active at political rallies and meetings; distributing campaign literature; and taking an active part in managing a partisan candidate’s political campaign.

Less Restricted employees (except certain employees appointed by the President with the advice and consent of the Senate and those paid from an appropriation for the Executive Office of the President), however, are prohibited from engaging in political activity while on duty, in a federal room or building, while wearing an official uniform or insignia, or while using a government vehicle. Likewise, Less Restricted employees may not use their official authority or influence to interfere with the result of an election or solicit, accept, or receive political contributions at any time. Hence, Less Restricted employees must be mindful that the above-listed activities could violate the Act if the employees engaged in the activities at the wrong time, or in the wrong place or manner. If a Less Restricted employee has a question about a specific political activity, he or she can contact OSC to obtain further guidance.

**Answer (Further Restricted employees):** No. The Hatch Act expressly prohibits Further Restricted employees from taking an active part in partisan political management or political campaigns. Accordingly, Further Restricted employees may not campaign for partisan candidates in concert with a political party, candidate for partisan political office or a partisan political group.

### **3. May I distribute brochures for a political party to people arriving at a polling place on Election Day?**

**Answer (Less Restricted employees):** Yes. A Less Restricted employee may stand outside a polling place on Election Day and hand out brochures on behalf of a partisan political candidate or political party.

**Answer (Further Restricted employees):** No. A Further Restricted employee may not distribute brochures for a political party to people arriving at a polling place on Election Day.

## **SOLICITING, FUNDRAISING AND POLITICAL CONTRIBUTIONS**

### **1. Can I serve as a treasurer for a political action committee (PAC) or as the treasurer for someone’s campaign?**

**Answer (Less Restricted employees):** It depends. Federal employees may actively participate in partisan political campaigns and partisan political management to the extent not expressly prohibited by the Hatch Act. Thus, an employee may serve as treasurer for a partisan political campaign or other partisan

political group, provided he does not solicit, accept, or receive political contributions from any person (or engage in any other of the Act's prohibited activities). For example, an employee serving as the treasurer of a partisan political campaign may not allow his name to appear anywhere on a letter soliciting political contributions for an organization, party, or candidate, including in the letterhead of such a letter. Some states require the campaign treasurer's name to appear on all campaign materials, including solicitations. Thus, an employee living in one of those states would be prohibited from serving as a campaign treasurer. He could, however, hold another position within the campaign if the duties of which would not entail activities prohibited by the Hatch Act.

**Answer (Further Restricted employees):** No. Further Restricted employees may not take an active part in partisan political management or partisan political campaigns. Thus, they may not hold office in any partisan political organization or work for a partisan political campaign in any capacity. Accordingly, an employee who is further restricted under the Act may not serve as a treasurer for a PAC or for a candidate's partisan political campaign, regardless of whether the position would entail soliciting, accepting, or receiving political contributions.

**2. Can I make a contribution to the campaign of a partisan candidate, or to a political party or organization?**

**Answer:** Yes. A federal employee may contribute to the campaign of a partisan candidate, or to a political party or organization, provided the employee does not do so while on duty or in the federal workspace. For additional guidance concerning fundraising activities, please also refer to questions 3 through 10.

**3. I am a federal employee and a supervisor. May I invite my subordinates to a fundraiser for a partisan political candidate or political party?**

**Answer:** No. Inviting subordinate employees to a political fundraiser would violate at least two provisions of the Hatch Act. First, inviting other individuals to a political fundraiser would violate the Act's prohibition against soliciting, accepting, or receiving political contributions, even if the supervisory employee does not expressly ask the individuals to contribute money. Second, inviting subordinate employees to any political event would violate the Act's prohibition against using one's official authority or influence to affect the result of an election. Such conduct is inherently coercive, and violates the Act even if the supervisory employee does not threaten to penalize subordinates who do not attend or promise to reward those who do attend. Finally, inviting subordinates to a political fundraiser while at work would violate the Act's prohibition against engaging in political activity while on duty or in a federal building or vehicle. For additional guidance concerning fundraising activities, please also refer to questions 2 and 4 through 10.

**4. I received an invitation to a political fundraising event, and I think some of my friends would like to go, too. May I e-mail them the invitation I received?**

**Answer:** No. The Hatch Act prohibits employees from soliciting or accepting political contributions, which includes inviting individuals to political fundraisers. Therefore, the Hatch Act would prohibit you from inviting your friends to a political fundraiser by e-mailing them an invitation to the event. For additional guidance concerning fundraising activities, please also refer to questions 2 through 3 and 5 through 10.

**5. Can I help organize a political fundraiser?**

**Answer (Less Restricted employees):** Although the Hatch Act would prohibit an employee from hosting or serving as a point of contact for a fundraiser, the employee is allowed to help organize a fundraiser.

*For example, the employee could stuff envelopes, set up tables for the event, select the menu or hire entertainment. However, the employee must not personally solicit, accept or receive political contributions. For additional guidance concerning fundraising activities, please also refer to questions 2 through 4 and 6 through 10.*

**Answer (Further Restricted employees):** *No, you may not organize a political fundraiser. For additional guidance concerning fundraising activities, please also refer to questions 2 through 4 and 6 through 10.*

**6. Can my name appear on invitations to a political fundraiser as a sponsor or point of contact?**

**Answer:** *No. An employee's name may not be shown on an invitation to such a fundraiser as a sponsor or point of contact. For additional guidance concerning fundraising activities, please also refer to questions 2 through 5 and 7 through 10.*

**7. Can I speak at a political fundraiser?**

**Answer (Less Restricted employees):** *A Less Restricted employee is allowed to give a speech or keynote address at a political fundraiser, as long as he or she is not on duty, appears only in his or her personal capacity and does not solicit political contributions. For additional guidance concerning fundraising activities, please also refer to questions 2 through 6 and 8 through 10.*

**Answer (Further Restricted employees):** *No. A Further Restricted employee may not speak at a political fundraiser. For additional guidance concerning fundraising activities, please also refer to questions 2 through 6 and 8 through 10.*

**8. If I'm going to speak at a political fundraiser, what information about me can be printed on the invitations?**

**Answer:** *An employee's name can be shown as a guest speaker. However, the reference should not in any way suggest that the employee solicits or encourages contributions. Invitations to the fundraiser may not include the employee's official title; although an employee who is ordinarily addressed with a general term of address such as "The Honorable" may use, or permit the use of, that term of address on the invitation. For additional guidance concerning fundraising activities, please also refer to questions 2 through 7 and 9 through 10.*

**9. Can my spouse host a fundraiser?**

**Answer:** *Yes. Hatch Act coverage is not transferred to spouses or family members. Therefore, as long as your spouse is not covered by the Hatch Act because of his or her own employment, then he or she may host a fundraiser. For additional guidance concerning fundraising activities, please also refer to questions 2 through 8 and 10.*

**10. My spouse is hosting a political fundraiser. Can I assist with the event?**

**Answer (Less Restricted employees):** *Yes, but only in a limited capacity. The Code of Federal Regulations states that a federal "employee may help organize a fundraiser including supplying names for the invitation list as long as he or she does not personally solicit, accept, or receive contributions." 5 C.F.R. § 734.208, example 9. By its very nature, a fundraiser is organized to solicit, accept, and receive contributions.*

*A Hatch Act-covered employee may assist his spouse with addressing envelopes, placing invitations in a U.S. mail receptacle, or cleaning/organizing the venue. A covered employee may even suggest names to his spouse to add to the invitation list; **however**, the suggested invitees must have a relationship with the*

spouse independent of the covered employee. For example, the covered employee can suggest a neighbor or church member that is known to both. The covered employee, however, **cannot** suggest his co-worker(s) if his spouse does not know the co-workers well enough to invite them of his or her own accord. Covered employees cannot act or appear to act as the host of the event, including introducing any speakers or attendees. For additional guidance concerning fundraising activities, please also refer to questions 2 through 9.

Covered employees who find themselves in this situation are strongly encouraged to contact OSC for guidance as to their specific circumstances.

**Answer (Further Restricted employees):** No. A Further Restricted employee may not assist at a political fundraiser, including behind the scenes activities. For additional guidance concerning fundraising activities, please also refer to questions 2 through 9.

**11. A political party or club is hosting a “meet and greet” luncheon for a partisan political candidate. The event is not a fundraiser; however, the cost of attending the event is \$20, which covers the room rental and food service. May a federal employee sell tickets to the meet and greet or collect the \$20 from attendees?**

**Answer:** No. The Hatch Act prohibits federal employees from soliciting, accepting or receiving political contributions. A political contribution is defined as any gift, subscription, loan, advance, or deposit of money or anything of value, made for the purpose of promoting or opposing a political party, candidate for partisan political office, or partisan political group. 5 C.F.R. § 734.101. The purpose of the luncheon is to promote a candidate who is running for partisan political office. Accordingly, contributions made to help cover the costs of the luncheon constitute political contributions for purposes of the Hatch Act. Because the Hatch Act prohibits employees from soliciting or accepting political contributions, the Act would prohibit a federal employee from soliciting or accepting contributions to help pay for the cost of the luncheon.

**12. May an employee solicit and accept contributions for his candidacy for party office?**

**Answer (Less Restricted employees):** Yes. If the contribution is made solely for the benefit of the employee’s campaign for party office, the Hatch Act would not prohibit the employee from soliciting or accepting such contributions. However, the employee should not donate or refer any of the campaign contributions received to a political party or partisan political group.

The question is not applicable to Further Restricted employees because they may not take an active part in partisan political management.

**13. May an employee solicit and accept contributions to help pay for the costs of attending a political party convention as a delegate?**

**Answer (Less Restricted employees):** No. The Hatch Act prohibits employees from soliciting, accepting or receiving political contributions. A political contribution is defined as any gift, subscription, loan, advance, or deposit of money or anything of value, made for the purpose of promoting or opposing a political party, candidate for partisan political office, or partisan political group. The purpose of being a delegate to a party’s convention is to vote for and support a particular candidate as the nominee of that party. Accordingly, contributions made to a delegate to help cover the costs of attending the national convention constitute political contributions for purposes of the Hatch Act. Because the Hatch Act prohibits employees from soliciting or accepting political contributions, the Act would prohibit a federal employee from soliciting or accepting contributions to help pay for the costs of attending a party convention as a delegate

*This question is not applicable to Further Restricted employees because they may not take an active part in partisan political management and thus may not serve as a delegate.*

## **POLITICAL ACTIVITY AND THE FEDERAL WORK PLACE – GENERALLY**

### **1. Can I display a picture of a candidate for partisan political office in my workspace?**

*Answer: Because section 7324 of the Hatch Act prohibits federal employees from engaging in political activity while on duty or in a federal building, the Act generally would prohibit employees from displaying pictures of candidates for partisan public office in the federal workplace. See 5 C.F.R. § 734.306, Example 16. However, we advise that an employee would not be prohibited from having a photograph of a candidate in his office if all of the following apply: the photograph was on display in advance of the election season; the employee is in the photograph with the candidate; and the photograph is a personal one (i.e., the employee has a personal relationship with the candidate and the photograph is taken at some kind of personal event or function, for example, a wedding, and not at a campaign event or some other type of partisan political event). Of course, an employee must not have a political purpose for displaying the photograph, namely, promoting or opposing a political party or a candidate for partisan political office.*

### **2. Can I wear a partisan political button or t-shirt while I am at work or display such items in my office?**

*Answer: No. Covered employees may not engage in political activity while on duty, in a government office or building, in uniform, or in a government vehicle. Wearing or displaying candidate, political party or political group materials while on duty or in your work space qualifies as political activity. This prohibition extends to wearing or displaying such items in, for example, the cafeteria, lobby or on-site gym of a federal building.*

### **3. can I have a screen saver on my computer or a picture in my office with a political message (e.g., a campaign sign, campaign logo, etc.)?**

*Answer: No. Covered employees may not engage in political activity while on duty, in a government office or building, in uniform, or in a government vehicle. Displaying campaign material qualifies as political activity.*

### **4. If I have a bumper sticker on my personal car, am I allowed to park the car in a government lot or garage, or in a private lot/garage if the government subsidizes my parking fees?**

*Answer: Yes. An employee is allowed to park his or her privately owned vehicle with a bumper sticker in a government lot or garage. An employee may also park the car with a bumper sticker in a private lot or garage for which the employee receives a subsidy from his or her agency.*

## **E-MAIL AND BLOGGING AS POLITICAL ACTIVITY**

### **1. What is a partisan political e-mail?**

*Answer: A partisan political e-mail is an e-mail that meets the definition of political activity. In other words, it is an e-mail that is directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.*

### **2. I received a partisan political e-mail in my government e-mail account while at work. Did I violate the Act?**

*Answer: No. Simply receiving a partisan political e-mail while at work, without more, does not constitute prohibited political activity as defined under the Hatch Act or its regulations. However, federal employees must not send or forward the e-mail to others.*

**3. Can I send or forward a partisan political e-mail from my work e-mail address to my non-government e-mail address while I am at work, i.e., on duty and in a federal room or building?**

*Answer: Yes. If you received a partisan political e-mail in your work e-mail account you may send that e-mail to your non-government e-mail address while at work. Simply sending such an e-mail to your personal e-mail address, without more, does not constitute prohibited political activity as defined under the Hatch Act or its regulations. But please be aware that you would violate the Hatch Act if you sent the e-mail to your non-government e-mail address and then using your non-government e-mail account you sent the e-mail to other people while you were on duty and/or at work.*

**4. If I am on duty and/or in my government workspace, can I login to my non-government e-mail account and from that account, send or forward a partisan political e-mail?**

*Answer: No. You cannot send a partisan political e-mail from your non-government e-mail address while you are on duty and/or at work.*

**5. May I write a letter to the editor or post a comment on a blog endorsing a partisan political candidate?**

*Answer (Less Restricted employees): Yes, but with some limitations. Federal employees are permitted to express their opinions privately and publicly on political subjects and participate in political activities to the extent not expressly prohibited by the Hatch Act. The Act expressly prohibits federal employees (except certain employees appointed by the President with the advice and consent of the Senate and those paid from an appropriation for the Executive Office of the President) from engaging in political activity while on duty, in a federal building, or in a government vehicle. In addition, federal employees may not use their official authority or influence to interfere with the result of an election or solicit, accept, or receive political contributions at any time.*

*Accordingly, a federal employee may write a letter to the editor or post a comment on a blog endorsing a candidate, provided he does not do so while on duty or in a federal building or vehicle. Further, he must endorse the candidate in his personal capacity and may not identify his federal position or office. Finally, the endorsement may not contain a request for political contributions or information about where voters may contribute, even if the employee makes the endorsement anonymously.*

*Answer (Further Restricted employees): Similarly, Further Restricted employees may write a letter to the editor or post a comment to a blog in accordance with the conditions described above as long as the activity is not done in concert with a partisan political party, candidate for partisan political office or a partisan political group.*

## **MISCELLANEOUS**

**1. May a Presidential appointee with Senate confirmation (PAS) ask a subordinate schedule C or non-career senior executive service appointee (or any other subordinate federal employee) to write a policy speech for the PAS to give at a partisan political event?**

*Answer: No. The Hatch Act prohibits federal employees, including PAS's, from soliciting or accepting uncompensated volunteer services from an individual who is a subordinate. 5 C.F.R. §§ 734.302(b)(3), 734.303(d). Thus, the Act prohibits a supervisor from soliciting a subordinate employee to write a policy speech for the supervisor to give at a partisan political event. In addition, the Act prohibits a supervisor from accepting such a speech from a subordinate. The fact that the policy speech contains no partisan political advocacy is irrelevant.*

**2. I am a union official who is given official time to perform representational duties. Am I still considered “on duty” for purposes of the Hatch Act during that time?**

*Answer: Yes. Officials of labor organizations who have been given official time to perform representational duties are still considered to be “on duty” for purposes of the Hatch Act. Therefore, they may not engage in political activity while on official time to perform representational duties.*

**3. Can federal agencies discipline their employees for violating an internal e-mail or computer policy even though OSC is also investigating the same activity for a Hatch Act violation?**

*Answer: Yes. The U.S. Office of Special Counsel has exclusive jurisdiction to investigate and prosecute complaints alleging a violation of the Hatch Act. 5 C.F.R. § 734.102. Thus, while a federal agency may discipline an employee for violating an internal policy, such action by the agency does not preclude OSC from also investigating and/or prosecuting the matter.*

**4. Is a Hatch Act investigation an administrative or criminal matter?**

*Answer: A Hatch Act investigation is an administrative matter. Hatch Act matters are adjudicated before the Merit Systems Protection Board, which is an administrative agency. However, federal employees should also be aware that certain political activities may also be criminal offenses under title 18 of the U.S. Code. See 18 U.S.C. §§ 210, 211, 594, 595, 600, 601, 602, 603, 604, 605, 606, 607, 610.*

**5. A Hatch Act complaint has been filed against me. Can I find out who filed it?**

*Answer: As a general matter, OSC Staff may not disclose the name of the person who filed a Hatch Act complaint. OSC’s program files, including Hatch Act complaints, contain personal or sensitive information, which is generally protected from release under the Freedom of Information Act. Release of the names of individuals who have reported suspected Hatch Act violations is generally considered to be an unwarranted invasion of privacy that could interfere with the OSC’s law enforcement efforts by subjecting such individuals, on whom OSC relies to report potential violations, to possible harassment or reprisal for doing so. For more information about this policy please refer to [1/26/2004 Policy Statement on Disclosure of Information from OSC Program Files \(OSC49a\)](#).*

## **SOCIAL MEDIA**

*Note: This guidance refers primarily to Facebook and Twitter in the following questions due to the popularity of those sites for social networking, but the advice provided in response to these questions applies equally to all other social media, such as Myspace, LinkedIn, etc. Please contact OSC at (202) 254-3650 if you have a question not addressed by the following scenarios*

### **For Individual, Federal Employees:**

**1. May a federal employee write a blog on which he or she expresses support or opposition to partisan political candidates and political parties?**

*Answer (Less Restricted Employees): Yes, but subject to the following limitations. Federal employees are not prohibited from expressing their opinions concerning partisan political candidates and political parties. However, they are prohibited from engaging in “political activity,” that is, activity directed at the success or failure of a political party, partisan political candidate, or partisan political group, while on duty or in a building occupied in the discharge of official duties by a federal officer or employee. Thus, federal employees are prohibited from writing such a blog while on duty or in their federal workplace. However, doing so outside of duty hours and in another location would not violate the Hatch Act.*

*The Hatch Act also prohibits federal employees from using their official authority or influence to affect the result of an election. Therefore, they should not identify their official titles or use their statuses as*

*federal employees to bolster the opinions concerning political parties, partisan candidates, or partisan groups that they post on their blogs.*

*Finally, federal employees are prohibited from soliciting, accepting, or receiving political contributions at any time. Thus, at no time should they suggest or ask that readers of their blogs make contributions to a political party, partisan political candidate, or partisan political group. Further, they should not post links to the contribution page of any of those entities' or individuals' websites.*

**Answer (Further Restricted Employees):** *Yes, but with an added limitation. In addition to the guidelines set forth above for less restricted employees, note that further restricted employees are prohibited from taking an active part in partisan political management and partisan political campaigns. Taking an "active part" would include distributing campaign literature. Thus, a further restricted employee would be prohibited from posting anything on his or her blog that was created by, or leads to information created by, the party, partisan candidate, or partisan campaign, because OSC would consider such activity to be the equivalent of distributing literature for those entities.*

**2. If a federal employee has listed his official title on his Facebook profile page, may he fill in the field provided for "political views" on his Facebook profile?**

**Answer (Less Restricted Employees):** *Yes. Although the Hatch Act and its attendant regulations prohibit federal employees from using their official titles while engaging in political activity, simply identifying the political party that they support on their Facebook profiles, without more, is not "political activity," that is, activity directed toward the success or failure of a political party, partisan candidate, or partisan political group.*

**Answer (Further Restricted Employees):** *Yes. The same answer applies to further restricted employees.*

**3. May federal employees advocate for or against a political party, partisan political group, or candidate for partisan public office on their Facebook pages or on the pages of others?**

**Answer (Less Restricted Employees):** *Yes, to the extent such activity is not expressly prohibited by the Hatch Act. As explained previously, federal employees may not solicit, accept, or receive campaign contributions at any time. Further, they may not use their official authority or influence to affect the result of an election. Finally, they may not engage in political activity while on duty or in a federal workplace. Thus, they may not ask or encourage readers to make contributions to a political party, partisan political group, or partisan candidate, or post a link to the contribution page of any of those groups' or individuals' websites, on their Facebook pages or the pages of others.*

*Moreover, they may not refer to their official positions with the government in an effort to bolster the political advocacy statements they post on Facebook. Note, however, that OSC would not consider the inclusion of a federal employee's official title on his Facebook profile, without more, to be an improper use of his official authority to bolster the statements he posts on Facebook.*

*Finally, federal employees must not post comments or opinions on Facebook that advocate for or against a political party, partisan political group, or candidate for partisan public office, while they are on duty or in the federal workplace. They may, however, do so after duty hours and in another location.*

**Answer (Further Restricted Employees):** *The same answer applies to further restricted employees, but with one added restriction. Specifically, further restricted employees are prohibited from taking an active part in partisan political management or partisan political campaigns. Thus, they should not post on Facebook links to the website of a political party, partisan political group, or partisan political candidate, because such activity is akin to distributing literature on behalf of those entities or individuals.*

**4. May federal employees who are “friends” with their subordinate employees advocate for or against a political party, partisan political group, or candidate for partisan public office on their Facebook pages?**

*Answer (Less Restricted Employees): Yes, but subject to the following guidelines. Although the Hatch Act prohibits using one’s official authority or influence to affect the result of an election, OSC does not view this activity as violating the Hatch Act, provided the supervisor’s statements are directed at all of his Facebook “friends,” e.g., if he posted his opinion concerning a candidate in his Facebook “status” field. We see this activity as being akin to the supervisor placing a sign in his yard that promotes a candidate but that, incidentally, may be seen by his subordinates.*

*On the other hand, such statements would violate the Hatch Act if the supervisor specifically directed them toward his subordinate employees, or to a subset of friends that includes subordinates, e.g., by sending a Facebook “message.” In this situation, OSC would view the supervisor’s actions as purposefully targeting subordinates with the message, as opposed to the scenario described above, in which the subordinates see the supervisor’s opinions by chance.*

*Similar to the guidance above concerning Facebook’s messaging function, a supervisor may never send to subordinate employees an e-mail that is directed at the success or failure of a political party, partisan political group, or partisan candidate. OSC would view such an e-mail as one that purposefully targets subordinates, and thus it would be an improper use of the supervisor’s official authority or influence to affect the result of an election.*

*Answer (Further Restricted Employees): Yes. The same answer applies to further restricted employees, but subject to the following caveat. Specifically, further restricted employees are prohibited from taking an active part in partisan political management or partisan political campaigns. Thus, they should not post on Facebook links to the website of a political party, partisan political group, or partisan political candidate, because such activity is akin to distributing literature on behalf of those entities or individuals.*

**5. May a federal employee post a link to the website of a political party, partisan candidate, or partisan political group on his or another’s Facebook page or blog?**

*Answer (Less Restricted Employees): Yes, but with some limitations. Specifically, as explained above, federal employees are prohibited from soliciting, accepting, or receiving political contributions at any time. Therefore, they may post a link that leads to the home page of a political party, partisan candidate, or partisan political group. The link, however, may not lead directly to the page of the website on which readers can contribute money to the party, group, or candidate.*

*In addition, federal employees are prohibited from engaging in political activity while on duty or in a federal building. Posting links to the websites of political parties, partisan political groups, or partisan political candidates is akin to leafleting, that is, circulating literature for those groups and individuals. Thus, they may not post such links during duty hours or while in the federal workplace.*

*Answer (Further Restricted Employees): No. As explained previously, further restricted employees are prohibited from taking an active part in partisan political management and partisan political campaigns. As stated above, posting a link to the website of a political party or partisan political campaign is akin to leafleting, that is, distributing political literature on behalf of that party or campaign. Thus, the Hatch Act prohibits further restricted employees from posting such links on Facebook pages or blogs.*

6. **What should a federal employee do if one of his Facebook friends posts a comment on the employee's Facebook page that solicits contributions to a political party, partisan political group, or partisan candidate, posts a link to the contribution page, or otherwise solicits political contributions?**

*Answer (Less Restricted Employees):* Although federal employees are prohibited from soliciting, accepting, or receiving political contributions at any time, they are not responsible for the acts of a third-party, even if the third party's actions appear on their Facebook pages. Thus, if a federal employee's "friend" posts a link to the contribution page of a political party, partisan candidate, or partisan political group, or otherwise solicits political contributions, the employee does not need to take any action. However, he should not post any comments that would tend to encourage other readers to donate.

*Answer (Further Restricted Employees):* The same answer applies to further restricted employees.

7. **May a federal employee become a "friend" or "fan" of, or "like," the Facebook page of a political party, partisan political group, or partisan candidate?**

*Answer (Less Restricted Employees):* Yes, but subject to the following limitations. Specifically, federal employees are prohibited from engaging in political activity while on duty or in a federal building. Thus, if they are a "friend" or "fan" of, or "like," a party, partisan group, or partisan candidate's campaign on Facebook, they should not engage in activities with respect those entities' Facebook pages that would constitute "political activity" during duty hours or while in the federal workplace. Political activity is defined as any activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office. This would include, for example, suggesting that others "like," "friend," or become a "fan" of the party, group, or candidate, accepting an invitation to a partisan political event, or forwarding the invitation to others.

*In addition, federal employees are prohibited from soliciting, accepting, or receiving political contributions at any time. Thus, if an employee receives an invitation from the party, group, or candidate to a fundraising event via Facebook or Twitter, the employee would be prohibited from sharing that invitation with others.*

*Answer (Further Restricted Employees):* A further restricted employee may become a "friend" or "fan" of, or "like," a party, partisan group, or candidate's Facebook page, but only if he adjusts his privacy settings such that his list of "friends," "likes," "interests," and "pages" that provides links to those entities' pages are visible only to the employee. The rationale for this condition is that further restricted employees are prohibited from taking an active part in partisan political management and partisan political campaigns. If a further restricted employee becomes a "friend" or "fan" of, or "likes," a party, partisan group, or candidate's Facebook page, the employee's page would include links to those entities' pages, which others could use to get information. Therefore, OSC views such activity as not just an endorsement of the party, group, or candidate, but also akin to circulating those entities' literature. In addition, if an employee "likes," or is a "friend" or "fan" of, a political party, partisan group, or candidate's campaign page, that employee would appear on their pages as well, which we view as an endorsement of a candidate that is done in concert with the campaign. Thus, a further restricted employee may be a "friend" or "fan" of, or "like," a party, partisan group, or candidate on Facebook in order to receive updates from them, but must take measures to prevent others from accessing such material through his Facebook page.

8. **May a federal employee continue to "follow" the official White House Twitter account, or be a "fan" or "friend" of, or "like," the official White House Facebook page, after the President has become a candidate for reelection?**

**Answer (Less Restricted Employees):** Yes, a federal employee may continue to follow the official White House Twitter account, i.e., the account the President uses to comment on his official functions, even after the President begins his reelection campaign. The same is true for being a “fan” or “friend” of, or “liking” the official White House page on Facebook.

**Answer (Further Restricted Employees):** Yes. The same answer applies to further restricted employees. Note that the Twitter account @barackobama is not an official Presidential account. Nor is the Facebook page found at [www.facebook.com/barackobama](http://www.facebook.com/barackobama). Both of these are maintained by Organizing for America, which is a component of the Democratic National Committee, and therefore a partisan political group. Thus, with respect to the @barackobama Twitter account and the “Barack Obama” Facebook page, please see OSC’s responses to the questions, “May a federal employee ‘follow’ the Twitter account of a political party, partisan political group, or partisan candidate’s campaign?” and, “May a federal employee become a “friend” or “fan” of, or “like,” the Facebook page of a political party, partisan political group, or partisan candidate?”

**9. May a federal employee “follow” the Twitter account of a political party, partisan political group, or partisan candidate’s campaign?**

**Answer (Less Restricted Employees):** Yes. A federal employee may “follow” a political party, partisan political group, or partisan candidate on Twitter. However, he must not engage in any activity on Twitter with respect to those entities that would otherwise violate the Hatch Act, i.e., activities that would constitute soliciting, accepting, or receiving political contributions at any time, or that would constitute political activity while on duty or in a federal building.

**Answer (Further Restricted Employees):** Yes, but only if the employee’s list of whom he follows is hidden from his followers. The rationale for this condition is that further restricted employees are prohibited from taking an active part in partisan political management and partisan political campaigns. If an employee follows the Twitter account of a political party, partisan political group, or partisan candidate, the employee’s account would include a link to the accounts of whomever he follows. Others could use that link to get information about the party, partisan group, or partisan campaign. Therefore, OSC views such activity as not just an endorsement of those entities, but also akin to circulating their literature. Thus, a further restricted employee may follow a party, partisan group, or partisan candidate on Twitter in order to receive information and updates from those entities, but he must take measures to prevent others from accessing partisan or campaign material through his Twitter account.

**10. May a federal employee use an alias to create a Facebook page or Twitter account and be a “fan” of, “like,” or “follow” a political party, partisan political group, or partisan candidate?**

**Answer (Less Restricted Employees):** Yes; however, be advised that employees remain subject to the Hatch Act even when they act under an alias. Specifically, federal employees are prohibited from engaging in political activity while on duty or in a federal building. Thus, if they “follow” on Twitter or are a “fan” of, or “like” a party, partisan group, or partisan candidate on Facebook, they should not engage in activities with respect to those entities that would constitute “political activity” during duty hours or while in the federal workplace. As explained above, political activity is defined as any activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office. This would include, for example, suggesting that others “follow,” “like” or become a “fan” of the party, partisan group, or candidate, accepting an invitation to a partisan political event, or forwarding the invitation to others.

*In addition, federal employees are prohibited from soliciting, accepting, or receiving political contributions at any time. Thus, if an employee receives an invitation from the candidate to a fundraising event via Facebook or Twitter, the employee would be prohibited from sharing that invitation with others.*

**Answer (Further Restricted Employees):** *Likewise, further restricted employees are subject to the same restrictions regardless of whether they act under an alias. Thus, they may “follow” or “like” a party, partisan group, or partisan candidate under an alias in Facebook or Twitter, but only if he adjusts his privacy settings such that whom he “follows” on Twitter or “likes” or is a “fan” of on Facebook is hidden from others. The rationale for this condition is that further restricted employees are prohibited from taking an active part in partisan political management and partisan political campaigns. If an employee follows the Twitter account of a political party, partisan political group, or partisan candidate, the employee’s account would include a link to the accounts of whomever he follows. Likewise, if he is a “fan” of or “likes” one of those entities on Facebook, a link to those entities’ pages would appear on his page. Others could use those links to get information about the party, partisan group, or candidate. Thus, further restricted employees must adjust their privacy settings accordingly.*

**11. May a federal employee create a Facebook or Twitter page in his official capacity and advocate for or against a political party, partisan political group, or partisan candidate on the page?**

**Answer (All Employees):** *No. Any page created in an employee’s official capacity (e.g., a Cabinet member) must be limited to official business matters and must remain politically neutral. Advocating for or against a political party, partisan group, or partisan candidate on such a page would constitute a violation of the Hatch Act’s prohibition against using one’s official authority to interfere with or affect the result of an election. Thus, such advocacy must be confined to the employee’s personal Facebook page or Twitter account, subject to the limitations described in response to Questions # 3 and # 5 above.*

**For Federal Agencies**

**12. May a federal agency have a Facebook page that includes a link to the website of a political party, candidate for partisan political office, or partisan political group?**

**Answer:** *No. An agency’s Facebook page, like its official website, should only be used to share information about the agency’s official business and mission and should remain politically neutral. Thus, the Hatch Act would prohibit a federal employee or official from posting on an agency’s Facebook page information about political parties, candidates for partisan political office, or partisan political groups, including links to websites of such individuals or entities.*

**13. May the agency’s Facebook page include a link to the website of the President’s reelection campaign, political party, or other partisan political group?**

**Answer:** *No. The agency’s Facebook page should only be used to share information about the agency’s official business and must remain politically neutral. When the President is campaigning for reelection, he is not acting in his official capacity as the nation’s Chief Executive Officer. Thus, while the agency’s Facebook page may include news about the President when he is acting in his capacity as the Chief Executive, it may not display news items concerning his candidacy for reelection.*

**14. May a news article about a federal agency official’s (e.g., Secretary or Administrator) speech at a political fundraiser or a rally for a partisan political candidate be posted on the agency’s Facebook page?**

**Answer:** *No. An agency’s Facebook page, like its official website, should only be used to share information about the agency’s official business and must remain politically neutral. When an agency*

*official engages in political activity, that is, activity directed toward the success or failure of a political party, partisan candidate, or partisan political group, he is acting in his personal, and not his official, capacity. Thus, while the agency may post news concerning the official's efforts to carry out the agency's mission on the agency's Facebook page, an article about the official's speech or attendance at a partisan political event should not be posted on the agency's Facebook page.*

// Original Signed//

DONALD R. MALLETT

Director, Civilian Personnel Advisory Center